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MEMO ENDORSED

October 22, 2023

Hon. Valerie E. Caproni
Judge, United States District Court
Southern District of New York
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Re: *United States v. Glen Davis*, 21 Cr. 603 (VEC)

Hon. Caproni:

On Friday, October 20, 2023, this court denied the defense's request for an adjournment of the trial date to (at least) November 13, 2023. We ask the Court to reconsider.

The adjournment request was based on, among other facts, the government's last-minute disclosure, on October 13, 2023, of more than 1,570 calls made to ProFlex and 1,815 calls made by NBA players to UMR. The government argued that their late production of these approximately 3,385 recordings was no ground to adjourn trial because the defense was unable to point to how the calls would be used in their favor (a threshold hard to meet when the government's late production meant no one on the defense had an opportunity to listen to the calls). The Court agreed with the government and denied the defense's request.

Attached for the Court's review is a recording of a call (not from the government's October 13, 2023) production which illustrates the conundrum for defense counsel – should we spend the week reviewing the calls, or studying the 3500 material and government exhibits produced last week by the government?

The attached call is made by Darius Miles to ProFlex. Around 13:40, after a long discussion around why it is taking ProFlex so long to process and pay his claims, Darius Miles expresses frustration and asks to speak to a supervisor. On the call Darius Miles states: "y'all acting like I'm trying to steal some of my own money."

It is likely that some of the 3,385 calls contain similar exculpatory language, or other evidence of innocence, that would be of use to the defense at trial or in preparing its case for trial.

It is the government who failed to produce these calls earlier and unfairly prejudiced Mr. Davis's defense. Moreover, there is no prejudice to the government from an adjournment (other than National Travel having to re-book travel tickets for their witnesses). For these reasons, we ask the Court to reconsider and adjourn trial to November 13, 2023.

Respectfully submitted,

/s/Sabrina Shroff
Counsel to Glen Davis

The adjournment request is DENIED for the reasons set forth at the October 20, 2023, conference. Mr. Davis has not set forth any "controlling decisions or data that the court overlooked." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

The Court gave the defense every opportunity to explain why they believed there could be material in these calls that is relevant and probative. They failed to do so at the October 20, 2023, conference. Mr. Davis has now focused on a single call, but has provided no explanation why the referenced call is exculpatory or even relevant to the defense. Mr. Miles's frustration with the pace of reimbursement for a series of expenses that may or may not have been legitimate has no apparent relevance to whether Messrs. Bynum and Davis committed the crimes with which they are charged.

SO ORDERED.



10/23/2023

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE